

Report on the

BOARD OF HOME MEDICAL EQUIPMENT SERVICES PROVIDERS

Montgomery, Alabama



Department of Examiners of Public Accounts

**50 North Ripley Street, Room 3201
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Ronald L. Jones
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July 27, 2005

Senator Larry Dixon
Chairman, Sunset Committee
Alabama State House
Montgomery, AL 36130

Dear Senator Dixon:

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the **Board of Home Medical Equipment Services Providers** in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the **Board of Home Medical Equipment Services Providers** in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald L. Jones".

Ronald L. Jones
Chief Examiner

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PROFILE

Purpose/Authority:

The Board of Home Medical Equipment Services Providers licenses and regulates providers of home medical equipment within Alabama and investigates complaints regarding licensees as well as those practicing without a license. The board operates under the authority of the *Code of Alabama 1975*, Sections 34-14C-1 through 34-14C-8.

Board Characteristics:

Members	9
Term	3 years staggered. Terms may be renewed for successive three-year periods.
Selection	Members are appointed by the Governor.
Qualifications	<p>No record of sanctions related to fraud under federal or state law.</p> <ul style="list-style-type: none">• A majority [at least five] of the members are required to be representatives of the home medical equipment services industry, selected from a list submitted by the Alabama Durable Medical Equipment Association or its successor and at least one person from each of the following categories:• A consumer of home medical equipment services.• A physician.• A representative from the acute-care hospital community.• A representative from the home health agency community.
Racial Representation	<p>No statutory requirement.</p> <p>No current minority race representation.</p>
Geographic Representation	No statutory requirement.
Consumer Representation	The board is required by law to have at least one member who is a consumer of home medical equipment services.
Other Representation	Membership shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state.
Compensation	No compensation, but reimbursed for reasonable travel and meeting expenses, according to a budget developed and approved by the board. <i>Code of Alabama 1975</i> , Section 34-14C-2(c).

Operations:

Administrator	Leadership Alliance, L.L.C. Paula Scout McCaleb, Executive Director Contracted by the board to provide administrative, management and logistical support effective November 18, 2004. Contract amount – \$34,899.96 annually. Services acquired by bid processed by the Department of Finance, Division of Purchasing.
Location	7245 Halcyon Summit Drive Montgomery, AL 36124-0066
Type of License or Permit Issued	Home Medical Equipment Service Provider Licensees - 424 As of May 26, 2005
Renewal	Annual
Examinations	None
Continuing Education	No statutory requirement.
Reciprocity	None
Employees	No direct employees – administrative services provided under contract.
Legal Counsel	None
Subpoena Power	None
Internet Presence	www.homemed.state.al.us - contains: <ul style="list-style-type: none">• Contact information• Downloadable application and complaint forms• Scheduled board meetings• Enabling Law• Rules and regulations
Attended Board Member Training	Mike Benefield, Board Chairman, 8/12/03 Leigh Ann Matthews, Board Member, 8/12/03 John G. Beard, Board Member, 8/12/03 Diane Starnes, Board Member, 8/12/03 Paula Scout McCaleb, Leadership Alliance, L.L.C., 4/17/02 and 4/27/05.

Financial Information:

Source of Funds Licensing and inspection fees.

State Treasury Yes, operates from Special Revenue Fund 1078. *Code of Alabama 1975*,
Section 34-14C-7.

Unused Funds Retains unexpended funds.

SIGNIFICANT ITEMS

- 1. The board's previous private contractor disbursed board funds totaling \$3,786.28 to pay for items apparently purchased with board funds to provide the contractor's services to the board.** Until November 18, 2004, the board contracted its administrative operations to the private firm of Warren & Company, Inc. and currently contracts with Leadership Alliance, LLC, also a private firm. The board remains responsible for these operations. The purchase of items with board funds by the contractor to be utilized to provide contracted services to the board does not conform to the terms of the contract. The contract, in Part IV, Compensation and Expenses, provides that "Payment shall be made only to the contractor, and the board shall have no obligation to any other person or corporation for expenses incurred by the contractor. The contractor has no authority to make any contracts, oral or written, in the name of the board." Part V of the contract states that, "The contractor shall have no power or authority to bind or otherwise obligate the board in any manner, except that the board shall make payment to the contractor for services and expenses incurred as provided herein." Although the contract was signed and agreed upon by all parties, responses to inquiries revealed a general misunderstanding of the items to be provided and/or services to be performed by the contractor. The contractor and the board chairman stated that their intentions were not in agreement with the provisions written into the contract. The board had not adopted oversight procedures to monitor the contractor's compliance with the contract.
- 2. The board incorrectly charged licensees an increased amount for license renewal during the period July 29, 2004 through December 2, 2004.** The board has statutory authority to change its fees and does so through administrative rules adopted in accordance with the state's Administrative Procedure Act. The board filed a Notice of Intended Action with the Legislative Reference Service on June 23, 2004 for a rule change to increase some of its fees. The rule change increased the license renewal fee from \$75 to \$250, which became effective December 3, 2004. The board began charging its licensees the increased fee before the rule became effective.
- 3. Language in the board's enabling statutes is incorrect.** The *Code of Alabama 1975*, Section 34-14C-4(h) states, "Employees, contractors, or inspectors of the board may conduct inspections of out-of-state facilities upon application from out-of-state applicants for licensure and renewal. Travel allowances, as allowed by the **Alabama State Ethics Commission**, shall be provided by the out-of-state applicant for all inspections conducted at the physical out-of-state location". Travel allowances are authorized by the *Code of Alabama 1975*, Sections 36-7-20 through 36-7-22 and not the Alabama State Ethics Commission.
- 4. Licensees expect more information from board.** Only 53% of 45 responses received from licensees stated that they were adequately informed by the board of changes to and interpretations of board positions, policies, rules and laws.

STATUS OF PRIOR FINDINGS

Except for the following, all prior findings have been resolved.

Sunset Report dated July 16, 2003

1. **Significant Item:** Unlike the enabling statutes of other professional licensing boards, there is no criminal penalty for persons practicing without a license or in conflict with the provisions of the license law.
Current Status: Unchanged - The only penalties prescribed by law are an administrative fine of up to \$1,000 per day and/or enjoinder by the board for practicing without a license. There is no criminal penalty prescribed and no appeal to the courts provided in the board's statutes. The board tried unsuccessfully to get legislation passed in 2002 (HB 580) to amend the board's licensing law so as to afford appeal rights to any person aggrieved by adverse action of the board.
2. **Significant Item:** The board is collecting unauthorized fees by including in its administrative rules a fee schedule that includes fees the board is not authorized by law to collect. Various opinions of the Attorney General have stated that fees not specifically authorized by law cannot be collected. Despite collecting unauthorized fees, four of the seven board members responding to a questionnaire cite funding as the board's most significant issue.

The board's administrative rules include the following fees not specifically authorized by statute:

- A late renewal fee of one hundred fifty dollars (\$150);
- A change of person in charge fee of one hundred dollars (\$100);
- ~~A change of physical address and site inspection of two hundred seventy-five dollars (\$275).~~

Current Status: This condition remains unchanged.

Routine Examination for the period October 1, 2000 through September 30, 2002

3. **Finding:** The board has improperly adopted an administrative rule that allows the board to levy an administrative fine of up to \$1,000 for an ethical violation. Current law provides for an administrative fine of \$1,000 per day to be levied for practicing without a license. There is no provision in the law to levy an administrative fine for any reason other than for practicing without a license. Various opinions of the Attorney General have stated that the law cannot be expanded by administrative rule. The *Code of Alabama 1975*, Section 34-14C-6 provides that, "An entity or person found providing home medical equipment services without a license as required by this chapter shall be subject to an administrative fine of one thousand dollars (\$1,000) per day *that services were provided without a license.*" The board has adopted administrative rule 473-X-5-.01 Ethics, which states that, "(2) The board may levy an administrative fine of up to \$1,000 for an ethical violation."

Current Status: This condition remains unchanged.

Do not cite lined text. Refer to Code of Alabama 1975, Section 34-14C-4.1 on page 28 of this report.

4. **Finding:** The board did not have on hand the appointment letters for all members. The *Code of Alabama 1975*, Section 36-12-2, requires that, “All public officers and servants shall correctly make and accurately keep in and for their respective offices or places of business all such books or sets of books, documents, files, papers, letters and copies of letters as at all times shall afford full and detailed information in reference to the activities or business required to be done or carried on by such officer or servant and from which the actual status and condition of such activities and business can be ascertained without extraneous information, and all of the books, documents, files, papers, letters, and copies of letters so made and kept shall be carefully protected and safely preserved and guarded from mutilation, loss or destruction.
- Current Status:** This condition remains unchanged.

BOARD RESPONSE TO SIGNIFICANT ITEMS & PRIOR FINDINGS

ALABAMA BOARD OF HOME MEDICAL EQUIPMENT SERVICES PROVIDERS

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Montgomery, AL 36124-0636
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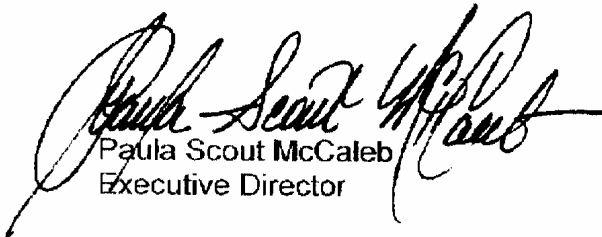
July 13. 2005

Mr. John E. Norris
Director, Operational Division
Department of Examiners of Public Accounts
50 North Ripley Street, Room 3201
Montgomery, Alabama 36104-3833

Dear Mr. Norris;

Attached is a response to the list of items for publication to the Sunset Review Committee on the results of the Home Medical Equipment Board Audit as requested. Please don't hesitate to contact me if any additional information is required. Thank you.

Sincerely,



Paula Scout McCaleb
Executive Director

**RESPONSE TO SIGNIFICANT ITEMS OF THE
ALABAMA BOARD OF HOME MEDICAL EQUIPMENT SERVICES
PROVIDER'S 2005 SUNSET REVIEW**

- 1. The board's previous private contractor disbursed board funds totaling \$3,786.28 to pay for items apparently purchased with board funds to provide the contractor's services to the board. RESPONSE:** This matter has been resolved as of March 15, 2005 with a letter of contract clarification. Specifically, the Board Chairman and the current management firm, Leadership Alliance met with the Examiners of Public Accounts as a result of a special audit of Warren and Company, Inc. and prior to the Board's Sunset Review Audit to address the previous and current management contract. The Board was advised that a letter of contract clarification be written to the previous and current management firm with instructions to forward this letter to the Board of Examiners of Public Accounts and the Department of Purchasing to resolve this matter. This was advised because neither contractor, the Board, nor the Attorney General's Office interpreted the contract as the Board of Examiners of Public Accounts. Further, it has never been the intent of the Alabama Board of Home Medical Equipment Services Providers that the management contract would cover any expenses incurred specifically in the Board's name like printing, postage, web site maintenance, etc. Rather, the contract was intended to cover board staff, office space, and office equipment. As a matter of history on this issue, this contract was drafted by the Attorney General's Office with the understanding by all parties that the contract covered only office staff, office space, and office equipment. However, due to the language in the contract that has resulted in this misunderstanding, the Board will have a new contract written by Legal Counsel for the Board and reviewed by the Board of Examiners prior to the next invitation to bid for management services.
- 2. The board incorrectly charged licensees an increased amount for license renewal during the period July 29, 2004 through December 2, 2004. RESPONSE:** This matter has been resolved with the certification of new Rules and Regulations and new management firm in place. The Board Chairman requested that the Rules and Regulations be certified as soon as possible by the previous management firm; and the previous Executive Director who filed the Notice of Intended Action on June 23, 2004 specifically instructed staff at Warren and Company, Inc. not to charge the new renewal fee until after the Rules were Certified before her departure in July to begin Leadership Alliance, L.L.C. However, during the 90-day contract cancellation period between the Board and Warren and Company, the Rules and Regulations were not filed in a timely manner and the incorrect renewal fee was charged. The new Rules and Regulations became effective December 3, 2004 reflecting the correct fees.

3. **Language in the board's enabling statute is incorrect**

RESPONSE: The Board has approved proposed legislation to correct this language and will introduce a housekeeping bill in the next regular legislative session to address this issue. Legislation was recently passed which allowed the Board the option of inspecting out of state facilities with authorization to collect fees from out of state applicants in order to cover the expense of the inspection. The language regarding travel expenses as allowed by the State Ethics Commission was proposed by Johnson & Johnson who requested this be included in order to ensure that out of state applicants would not be charged for any fees other than that allowed by State Law. However, in the haste of the legislative process, the Board did not double-check the accuracy of this language. Therefore, the Board will be making every attempt to adopt the accurate language regarding travel expenses during the next regular session.

4. **Licensees expect more information from board. RESPONSE: The**

Board will be implementing a Newsletter in October 2005 (as soon as funds are available) for the purpose of informing Licensees on Board Information. This has been a matter of Board concern and discussion for some time. The Board Members have attended regular Durable Medical Equipment Association meetings and reported that there has been a lack of information made available from the Board to licensees. The Board has developed a Web Site, which, is updated regularly of changes in Rules and Regulations, Enabling Statute, Calendar, Application, and general board information in order to address this issue. However, it has been a Board goal for several years now to provide a newsletter as soon as funds were available to do so. The Board has budgeted to allow for the publication of a regular Newsletter in the next fiscal year with a projected publication date of October 2005. This newsletter will also be made available on the Board's Web Site.

RESPONSE TO STATUS OF PRIOR FINDINGS LISTED AS UNCHANGED

1. **Significant Item: There is no criminal penalty for persons practicing without a license or in conflict with the provisions of the license law.**

RESPONSE: The Board has attempted to pass legislation correcting this language with the introduction of HB 580 in 2002. Although this bill was unsuccessful, the Board has shown good faith in attempting to correct this. Further, the Board will continue to introduce legislation on this issue until it is resolved.

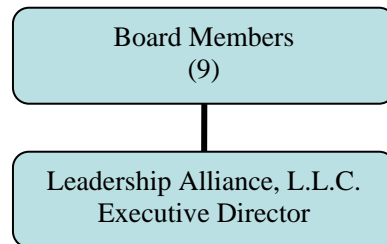
2. **Significant Item: The Board is collecting unauthorized fees.**

RESPONSE: The Board amended the Rules and Regulations following this finding by the Board of Examiners of Public Accounts in 2002 to reflect and charge only fees specifically allowed by statute. Legislation was passed in 2004 expanding on the Board's authority to charge fees. The Legislative Reference Service and Attorney General's Office advised the Board that the new language allowed for charging all fees previously charged. Therefore, the Board amended the Rules and Regulations to include these fees. During the 2005 Sunset Review Audit, it was pointed out that the language in the current statute only allowed for some of these fees to be charged, in light of this finding, the Board has now revised Rules and Regulations again to reflect only fees as allowed by statute and

as advised by the Examiners of Public Accounts, The Board's understanding was that this matter had been successfully resolved through legislation. However, due to this new information the Board will be including new language in a bill to be introduced in the next regular session and not charging any fees not authorized by statute.

3. **The board has improperly adopted an administrative rule that allows the board to levy an administrative fine of jp to \$1,000 for an ethical violation.** RESPONSE: This rule has never been implemented and the Board has amended the Rules and Regulations to strike this language entirely and resolving the matter,
4. **The board did not have on hand the appointment letters for all members.** RESPONSE: This matter has been resolved and copies have been faxed to the Board of Examiners of Public Accounts.

ORGANIZATION



PERSONNEL

There are no direct employees. Effective November 18, 2004 the board contracted with Leadership Alliance, L.L.C. to provide administrative management and logistical support; and including provision of an executive director for the board. Current compensation for these services is \$34,900 annually (11/18/04 – 11/17/05) consisting of \$2,908 per month. The company maintains the board's records and performs the board's administrative functions from its Montgomery offices located across from Auburn University at Montgomery. The board pays for equipment, supplies, and other expenses of operation. Prior to November 18, 2004, the board contracted with Warren & Company to provide administrative services.

PERFORMANCE CHARACTERISTICS

Total Expenditure per Licensee (2003-2004 Fiscal Year) - \$128.87

Number of Persons per Licensee in Alabama and Surrounding States

	Population (Estimate)*	Number of Licensees	Persons Per Licensee
Alabama	4,530,182	424	10,684
Florida	17,397,161	2,104	8,269
Georgia	8,829,383	N/A	N/A
Mississippi	2,902,966	450	6,451
Tennessee	5,900,962	454	12,998

*July 1, 2004 Census Bureau Population Estimates Report

Notification to Licensees of Board Decisions to Amend Administrative Rules -

The board complied with notification procedures provided in the state's Administrative Procedure Act, which includes submitting proposed rules to the Legislative Reference Service for publication in the Administrative Monthly, and public hearings on proposed rules. Licensees

were not individually notified. According to current management staff members, licensees are notified 30 days before the effective date of rule changes through postings on their web page at www.homemed.state.al.us. However, the board implemented an increase in license renewal fees before the rule for the increase became effective (see Significant Items).

Overlap of Jurisdiction

The Board of Pharmacy regulates the sale or provision of medical oxygen. A final settlement approval order mandated in Civil Action No. CV-97-416-GR in the Circuit Court of Montgomery County dated February 10, 1998 states that, “Any person, company, agency, business or entity of any kind which sells or provides medical oxygen directly or indirectly . . . must obtain a Retail Medical Oxygen Supplier Permit from the Alabama State Board of Pharmacy.

Complaint Resolution

Rule 473-X-6-.01 of the board’s administrative code establishes the procedures for documentation, receipt and investigation used in the complaint process relating to board licensees and/or illegal practices. Any person may file a complaint with the board seeking denial, suspension, or revocation of a license. Complaints are documented in a form prescribed by the board and shall be verified under oath by the complainant. If the board determines that the complaint is substantive and relevant, it may inspect the operations of the provider to determine compliance with the rules and regulations established by the board. The most common type of complaint received by the board is against entities operating without a license.

The board utilizes a Microsoft Excel spreadsheet file dedicated to recording and monitoring complaints. The file contains the name and address of the complainant, date and method of complaint receipt, name and address of the respondent, alleged violation, status, date of completion and action taken on the complaint.

Initial Documentation	The board requests that all complaints be filed in writing on a form prescribed by the board and may be submitted in person, by fax or mailed to the board office. (<u>Administrative Code, Section 473-X-6-.01(3)</u>).
Informal Disciplinary Procedure	An investigative committee composed of the board executive director, investigator, attorney and board member residing in the same district from where the complaint originated (if not deemed a competitor) performs an initial review of the complaint. If warranted the investigator may inspect the operations of the provider to determine compliance with the rules and regulations established by the board. At the conclusion of the investigation, the investigator will submit a written report to the investigative committee outlining the findings of his investigation. Upon receipt of the inspection report the board may either: (a) dismiss the complaint, or (b) send notice of non-compliance to the

	<p>respondent and authorize representatives of the board to negotiate a plan of compliance, which may include fines or fees to be paid to the board by the licensee. (<u>Administrative Code, Section 473-X-6-.01(3)(a)(b)</u>).</p>
Formal Hearings	<p>If the board determines that a hearing is warranted, the board will give written notice of the specific factual allegations and charges placed against the respondent and the time and place of a hearing of the charges by the board. (<u>Administrative Code, Section 473-X-6-.01(3)(c)</u>).</p> <p>Formal charges are sent to the respondent and comply with the requirements of the Alabama Administrative Procedures Act and are served in a timely manner as prescribed by law. The person charged with a violation appears before the members of the board for an administrative hearing, where the board is represented by its prosecuting attorney and the meeting is conducted by an administrative hearing officer. The person being charged has the right to an attorney to be present at the time of the hearing. Both the board and the licensee have the right to present testimony and each party has the right of cross-examination.</p>
Resolution/Disposition	<p>An entity or person found providing home medical equipment services without a license shall be subject to an administrative fine of up to one thousand dollars (\$1,000) per day that services were provided without a license and/or administratively enjoined by the board from providing services until such time as the entity or person complies with the law. (<i>Code of Alabama 1975</i>, Section 34-14C-6).</p> <p>At the conclusion of all testimony the board deliberates, outside the presence of all parties, as to the outcome and instructs the administrative hearing officer to draft a final order of their decision to be signed by the executive director and mailed to the parties involved. In all cases of disciplinary action taken by the board, the accused may appeal the disciplinary action to the Circuit Court of Montgomery County, AL. Either party has the right to appeal from the final decree of the circuit court as provided by law.</p>
Anonymous Complaints	Anonymous complaints are not accepted.

FINANCIAL INFORMATION

Schedule of Fees

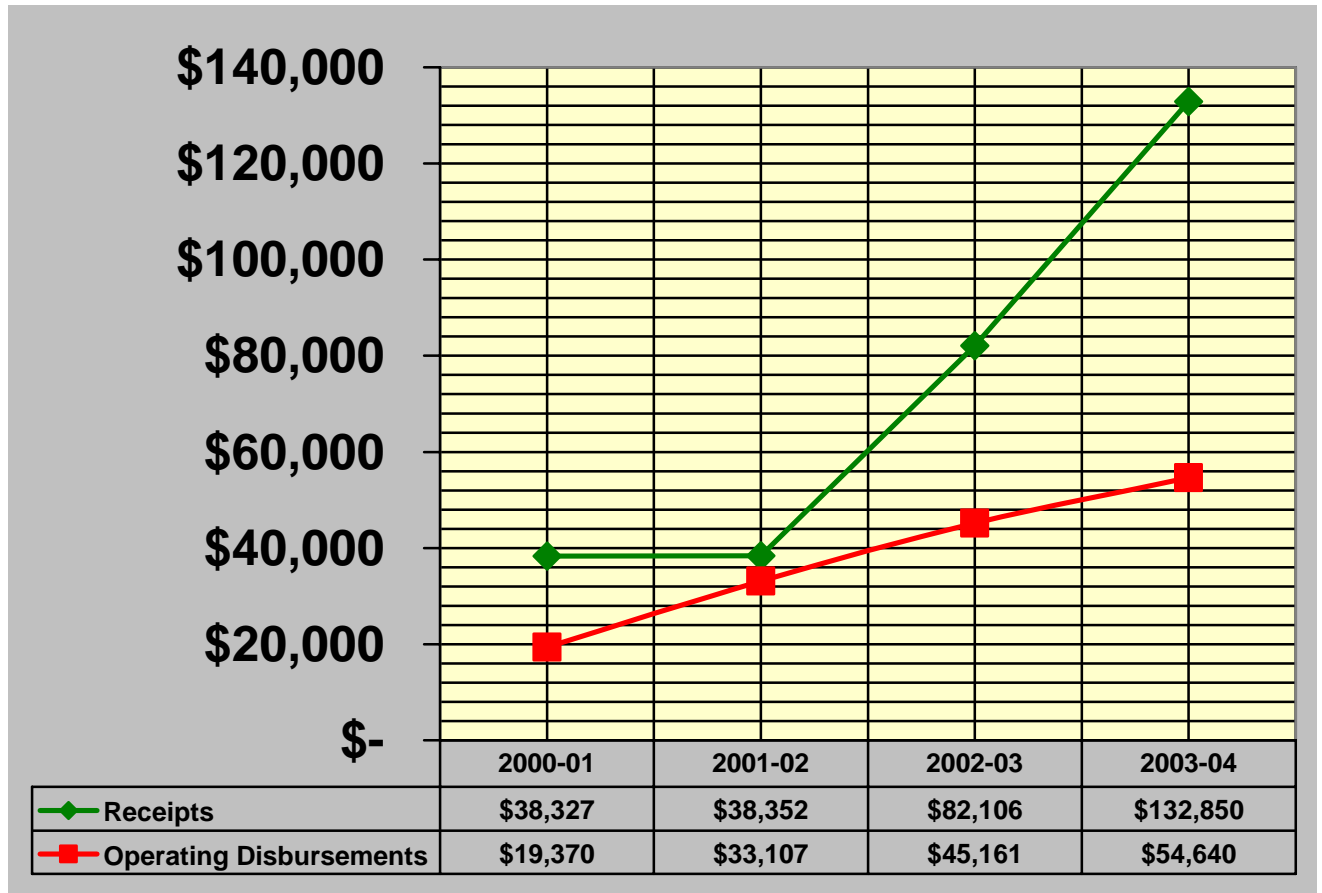
<i>Fee</i>	<i>Statutory Authority</i>	<i>Amount</i>
Application Fee	S 34-14C-4(b)	\$50.00
License Fee (per location)	S 34-14C-4(b)	\$250.00
Inspection Fee	S 34-14C-4.1	\$500.00
Re-Inspection Fee	S 34-14C-4(e)	\$75.00
Random Re-inspection Fee	S 34-14C-4.1	\$250.00
License Renewal Fee (per location)	S 34-14C-4(b)	\$250.00
Fine for late renewal. If not renewed within 60 days of expiration date, the license is considered expired and a new application and inspection will be required.	No statutory authority	\$150.00
Change of Person in Charge	No statutory authority	\$100.00
Change of Physical Address and Site Inspection	34-14C-4.1	\$275.00
Fine for providing home medical equipment services without a license.	S 34-14C-6	Not to exceed \$1,000.00/day
Fine for an ethical violation	No statutory authority	\$1,000

Schedule of Cash Receipts, Disbursements, and Balances

For the Period October 1, 2000 through September 30, 2004

	<u>2003/04</u>	<u>2002/03</u>	<u>2001/02</u>	<u>2000/01</u>
<u>Receipts</u>				
License Fees	\$ 132,850.00	\$ 70,106.00	\$ 38,352.00	\$ 38,327.00
Transfers In (Emergency Funds Transfer)		12,000.00		
Total	132,850.00	82,106.00	38,352.00	38,327.00
<u>Operating Disbursements</u>				
Personnel Costs				
Employee Benefits				
Travel In-State		713.55	3,451.69	1,370.34
Travel Out-of-State				
Repairs and Maintenance				
Rentals and Leases				
Utilities and Communications	867.53	363.42		
Professional Services	52,792.21	43,955.42	29,154.83	18,000.00
Supplies, Materials, and Operating Expenses	980.17	129.00	500.00	
Transportation Equipment Operations				
Transportation Equipment Purchases				
Other Equipment Purchases				
Total Operating Disbursements	54,639.91	45,161.39	33,106.52	19,370.34
Excess (Deficiency) of Receipts over Disbursements	78,210.09	36,944.61	5,245.48	18,956.66
Cash Balance at Beginning of Year	61,146.75	24,202.14	18,956.66	-
Cash Balance at End of Year	139,356.84	61,146.75	24,202.14	18,956.66
Reserved for Legal Obligations	7,358.32	1,921.42	1,100.00	-
Unobligated Cash Balance at End of Year	\$ 131,998.52	\$ 59,225.33	\$ 23,102.14	\$18,956.66

Operating Receipts vs. Operating Disbursements (Chart)



QUESTIONNAIRES

Board Member Questionnaire

Questionnaires were mailed to all nine board members. Six responded.

Question #1

What are the most significant issues currently facing the Board of Home Medical Equipment Services Providers and how is the board addressing these issues?

1. "Appropriation." *"We are presently attempting to get legislation passed to increase our appropriation increased for inspector services."*
2. "Funding (see question # 3) and enforcement (see question # 2)."
3. "Appropriation of funds to pay inspectors."
4. "Current authorizing legislation needs amendments to allow the board more discretion in establishing fees and in disciplinary actions." *"The board is working with stakeholders to secure enactment of changes that will improve act."*
5. "The ability to change the budget to pay the inspector."
6. "Getting new licenses for new businesses and investigating businesses with complaints." *"We have contracted with personnel to handle these tasks."*

Question #2

What changes to the Board of Home Medical Equipment Services Providers laws are needed?

1. "Just general housekeeping to include where sitting board members continue to serve at their term end until either reappointed or replaced."
2. "There needs to be a provision for our investigator to address egregious violations immediately. Much harm can be done before problems can be addressed presently."
3. "None."
4. "More authority to set fees and more latitude in determining disciplinary actions."
5. "No comment."
6. "No comment."

Question #3

Is the Board of Home Medical Equipment Services Providers adequately funded?

2 Yes 3 No 1 No Response

1. "No, not presently, but with a funding amendment in a special session and also with normal funding beginning 10/1/05, the board should be well funded."
2. "We have funds but we are limited in our ability to receive these funds."

Question #4

Is the Board of Home Medical Equipment Services Providers adequately staffed?

4 Yes 1 No 1 Unknown

Question #5

What is the purpose of the board's fiscal year end balance of unobligated funds?

1. "For the continuation of this program."
2. "To provide for uninterrupted service for the next fiscal year."
3. "To continue with board operations."
4. "To make sure board has adequate staff and inspectors/investigators to timely carry-out its duties and responsibilities to the public and to those subject to licensure."
5. "To amend budget for next year and conduct hearings."
6. "To carry these funds over into next year's budget."

Licensee Questionnaire

Questionnaires were mailed to one hundred registered home medical equipment services providers. Forty-five responded.

Question #1

Do you think regulation of your profession by the Board of Home Medical Equipment Services Providers is necessary to protect public welfare?

33 Yes 09 No 2 Unknown 1 No Opinion

1. "No. We provide feeding supplies to nursing home residents but are required to have a HME license."

Question #2

Do you think any of the Board of Home Medical Equipment Services Providers laws, rules, and policies are an unnecessary restriction on the practice of your profession?

07 Yes 32 No 4 Unknown 2 No Opinion

Question #3

Do you think any of the Board of Home Medical Equipment Services Providers requirements are irrelevant to the competent practice of your profession?

06 Yes 27 No 7 Unknown 5 No Opinion

Question #4

Are you adequately informed by the Board of Home Medical Equipment Services Providers of changes to and interpretations of board positions, policies, rules and laws?

24 Yes 13 No 6 Unknown 2 No Opinion

1. "No. The last change I had to find out on my own. It cost me \$500 because my license expired before I found out the change."
2. "Unknown. Only information provided was regarding fee increase."

Question #5

Has the Board of Home Medical Equipment Services Providers performed your licensing and/or renewal in a timely manner?

42 Yes 02 No 1 No Opinion

1. "No. Not the past group. This new group seems to be a little bit better."

Question #6

What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Board of Home Medical Equipment Services Providers doing to address the issue(s)?

1. "Our company feels that competitive bidding is a major concern."
2. "Slow payment of Medicaid and Medicare. *I am not aware of just what the board may be doing!*"
3. "I am unaware of anything the BHMESSP is doing to address any issue. The board serves no practical purpose. As a Medicare provider, there are already comprehensive rules and regulations in place. This board, in my opinion, is in place just to collect fees. Their inspection is a joke. It is basically a "drive-by" inspection. It served little purpose other than to verify the existence of the facility. The excessive regulation by this board and the excessive fees charged are an undue burden on this profession."
4. "Physical therapy clinics and chiropractors selling DME from their offices and out-of-state companies selling DME in Alabama."
5. "Out of state suppliers. What are we doing about them and how can we help?"
6. "Ridding our industry of unethical providers. There are many unethical providers in the state of Alabama."
7. "Out-of-state companies holding health fairs, gathering physical therapy info and giving away prizes for participants." *"The board, when notified, actively seeks out these companies to obtain an Alabama license."*
8. "Providers shipping supplies and equipment via internet orders without an Alabama license." *"I am not aware of any action by the board on this."*
9. "Registering out-of-state providers."
10. "Unlicensed out-of-state reps." *"Nothing."*
11. "I'm not aware of anything the board does."
12. "New businesses opening up and buying out hospices and not offering some DME company's contracts to be able to compete. This hurts small business. Physical therapists do not have a choice of DME company to use. Every patient should have the right to use DME of their choice."
13. "One of the most significant issues is the informal relationships HME providers are forming with physicians when they hire them as medical directors. The physician then

starts funneling his/her patients to the HME provider without giving them a choice. The same thing happens with hospital owned HME companies. No patient choice, leading to a conflict of interest.” *“I am not aware of anything being done by the board to correct these situations.”*

14. “Medical care doctors, providers, etc. and insurance.”
15. “Blue Cross/Blue Shield of Alabama paying less than Medicare for same DME and BC/BS having a virtual health insurance monopoly in Alabama.”
16. “Companies that are selling in retail type environments. These companies are selling to patients, some that do not qualify. When you have suppliers selling direct to the end user, the physician loses the power to say who qualifies and who does not qualify. Many physicians have stated that they either go along with the patient’s request, or simply fill the forms out and leave the supplier to say if they qualify.”
17. “Good question. Keeping informed on regulations that we need to follow.”
18. “Competitive bidding.”

Question #7

Do you think the Board of Home Medical Equipment Services Providers and its staff are satisfactorily performing their duties?

26 Yes 03 No 13 Unknown 3 No Opinion

1. “Yes, as best they can.”

Question #8

Has any member of the Board of Home Medical Equipment Services Providers or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a board service for you?

00 Yes 45 No 0 Unknown 0 No Opinion

Complainant Questionnaire

Questionnaires were mailed to twenty complainants. Ten responded.

Question #1

Was your complaint filed with the Board of Home Medical Equipment Services Providers by:

06 Mail 01 Phone 2 Fax 1 Other Unknown

Question #2

Was receipt of your complaint promptly acknowledged?

09 Yes 1 No 0 Unknown

If yes, approximately how long after you filed your complaint were you contacted by the Board of Home Medical Equipment Services Providers?

3 Immediately 02 Within 10 days 2 Within 20 days
1 Within 30 days 1 More than 30 days 0 Did not respond
0 Unknown

“No. No contact until they dismissed the complaint. They don’t seem to understand their own rules.”

Question #3

Was the employee who responded to your complaint knowledgeable and courteous?

06 Knowledgeable 06 Courteous 1 Neither 2 Unknown

Question #4

Did the Board of Home Medical Equipment Services Providers communicate the results of the investigation of your complaint to you?

08 Yes 01 No 1 Unknown

Question #5

Do you think the Board of Home Medical Equipment Services Providers did everything it could to resolve your complaint?

05 Yes 03 No 2 Unknown

Question #6

Were you satisfied with your dealings with the Board of Home Medical Equipment Services Providers?

07 Yes 03 No 0 Unknown

APPENDICES

Statutory Authority

CHAPTER 14C. HOME MEDICAL EQUIPMENT SERVICES PROVIDERS

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this chapter is effective August 1, 2000.

§ 34-14C-1. Definitions. Historical Notes References

As used in this chapter, the following terms shall have the following meanings:

(1) Board. The Board of Home Medical Equipment Services Providers as established by this chapter.

(2) Home medical equipment. Medical devices usable in a residential setting, as defined in regulations established by the board.

(3) Home medical equipment services. The delivery, installation, maintenance, replacement of, or instruction in the use of medical equipment and related supplies used by a sick or disabled individual to allow that individual to obtain care or treatment and be maintained in a residential setting.

(4) Home medical equipment services provider. A corporation, other business entity, or person engaged in the business of providing home medical equipment services, either directly or through a contractual arrangement, to an unrelated sick or disabled individual in the residence of that individual.

(Act 2000-739, p. 1619, § 1.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective August 1, 2000.

REFERENCES

ADMINISTRATIVE CODE

15 Ala. Admin. Code 473-X-1-.01, Board of Home Medical Equipment Services Providers; Definitions.

§ 34-14C-2. Home Medical Equipment Services Providers Board. Historical Notes References

(a) Within 90 days of August 1, 2000, the Governor shall appoint a minimum of nine persons to serve on the Board of Home Medical Equipment Services Providers, such persons to include a majority who are representatives of the home medical equipment services industry, and at least one person from each of the following categories: A consumer of home medical equipment services, a physician, a representative from the acute-care hospital community, and a representative from the home health agency community. Those persons representing the home medical equipment services provider industry shall be selected from a list submitted by the Alabama Durable Medical Equipment Association or its successor. Board members shall have no record of sanctions related to fraud under federal or state law. The membership of the board shall be inclusive and reflect the racial, gender, geographic,

urban/rural, and economic diversity of the state.

(b) The members appointed to the board shall serve for terms of three to five years, with one-third of the board being replaced each year, beginning in year four. The terms may be renewed for successive three-year periods.

(c) Members of the board shall not be entitled to compensation for service, but shall be reimbursed for reasonable travel and meeting expenses, according to a budget developed and approved by the board.

(d) The board shall have the responsibility for creating, establishing, maintaining, and enforcing regulations governing the operation of home medical equipment services providers, including the qualifications of inspectors, the nature of inspections, and the process for appeals.

(e) Any vacancy on the board must be filled by the Governor within 60 days. If a vacancy occurs among those members who represent the home medical equipment services provider industry, the appointment shall be made from a list submitted by the Alabama Durable Medical Equipment Association or its successor.
(Act 2000-739, p. 1619, § 2.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective August 1, 2000.

Code Commissioner's Notes

Section 2 of Act 2002-95, provides: "The existence and functioning of the Board of Home Medical Equipment Services Providers, created and functioning pursuant to Sections 34-14C-1 to 34-14C-8, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

Act 2004-80, § 2 provides: "The existence and functioning of the Board of Home Medical Equipment Services Providers, created and functioning pursuant to Sections 34-14C-1 to 34-14C-8, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

REFERENCES


ADMINISTRATIVE CODE

15 Ala. Admin. Code 473-X-2-.01, Board of Home Medical Equipment Services Providers; Employees; Oath; Meeting; Powers.

15 Ala. Admin. Code 473-X-3-.01, Board of Home Medical Equipment Services Providers; Administrative Procedure.

LIBRARY REFERENCES

American Digest System:

Licenses 21; States  45.

Corpus Juris Secundum:

C.J.S. Licenses §§ 37-38; States §§ 79-80, 82, 136.

§ 34-14C-3. Duties of board; requirements of providers. Historical Notes References

(a) Through consultation with current members in good standing of the Alabama Durable Medical Equipment Association or its successor, the board shall adopt regulations that specify the medical equipment to be included in this chapter, set standards for the licensure of entities which provide home medical equipment services, and govern the safety and quality of home medical equipment service providers.

(b) All home medical equipment services providers shall:

(1) Comply with all applicable federal and state laws and regulations governing the safety of home medical equipment services provider facilities and delivery vehicles, the safety and quality of home medical equipment, and the safety, quality, and effectiveness of home medical equipment service procedures.

(2) Comply with any additional standards and testing requirements, as duly promulgated by the board and required for licensure.

(Act 2000-739, p. 1619, § 3.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective August 1, 2000.

REFERENCES

ADMINISTRATIVE CODE

15 Ala. Admin. Code 473-X-2-.01, Board of Home Medical Equipment Services Providers; Employees; Oath; Meeting; Powers.

LIBRARY REFERENCES

American Digest System:

Licenses  21.

Corpus Juris Secundum:

C.J.S. Licenses §§ 37-38.

§ 34-14C-4. Licensure; inspections. Historical Notes References

(a) Except as otherwise provided in this chapter, a home medical equipment services provider shall be licensed annually by the board before the provider may engage in the provision of home medical equipment services. In Alabama, when a single business entity provides home medical equipment services from more than one location within the state, each such location shall be required to obtain a license on its own merit. Out-of-state home medical equipment services providers are not required to maintain a physical location in state; however, out-of-state applicants must provide a physical location meeting requirements of Section 473-X-4-.01, Subsection a-f, Alabama Administrative Code, or its successors, and may be subject to inspection by the board.

(b) A license applicant shall submit the application for licensing or renewal to the board on a form promulgated and required by the board. In-state and out-of-state applicants shall pay a reasonable nonrefundable fee established by the board at the time the application is submitted. The board shall have the authority to set reasonable fees for in-state and out-of-state applicants to obtain a license. The license to engage in providing home medical equipment services shall be effective upon written notification from the board that the applicant meets the standards and has complied with all requirements for licensing.

(c) Accreditation by the Joint Commission on Accreditation of Healthcare Organizations, the Community Health Accreditation Program, or other accrediting entities shall not be substituted for compliance with this chapter.

(d) Licenses issued pursuant to this chapter expire on the anniversary date of the original license unless renewed for an additional one-year period.

(e) Home medical equipment service providers who, upon initial inspection, are found not to comply with applicable licensing standards, may be issued a provisional license valid for six months. The board shall advise the provider of the areas of noncompliance contemporaneous with the issuance of the provisional license, and shall reinspect the provider for compliance between four and six months after the provisional license is issued upon application and payment of a reasonable reinspection fee established by the board of up to one hundred fifty dollars (\$150).

(f) Except as provided in this chapter, the board may inspect all license applicants to determine compliance with the requirements of this chapter prior to the issuance of a license.

(g) The board may conduct random inspections upon application for renewal of a license, for cause, and as necessary to ensure the integrity and effectiveness of the licensing process.

(h) Employees, contractors, or inspectors of the board may conduct inspections of out-of-state facilities upon application from out-of-state applicants for licensure and renewal. Travel allowances, as allowed by the Alabama State Ethics Commission, shall be provided by the out-of-state applicant for all inspections conducted at the physical out-of-state location.

(i) At any time upon the filing of a substantive, relevant complaint of a consumer of services or other qualified source as identified by the board, the board may inspect the operations of the provider to determine compliance with

the requirements of this chapter.

(j) The board shall adopt and maintain standards for the individuals charged with conducting the inspections for the purpose of determining compliance with the requirements of this chapter. Board employees or contractors may be authorized to conduct inspections. Out-of-state inspections shall be limited to no more than two employees, contractors, or inspectors of the board per visit.

(k) Upon notice of a failure to pass an inspection and obtain a license, a provider shall have 30 days to appeal the inspection results or be subject to penalties pursuant to Section 34-14C-6. Upon appeal, a provider shall have the right to an inspection review or a new inspection in accordance with procedures promulgated by the board. (Act 2000-739, p. 1619, § 4; Act 2004-441, § 1.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective August 1, 2000.

Amendment notes:

The 2004 amendment, effective August 1, 2004, in subsection (a) substituted "In Alabama, when" for "When", and added the third sentence; in subsection (b) substituted "In-state and out-of-state applicants shall pay a reasonable" for "The applicant shall pay a", substituted "at the time the application is submitted" for "in an amount not to exceed seventy-five dollars (\$75) at the time the application is submitted", and added the third sentence; deleted subsection (e); redesignated subsections (f) through (h) as subsections (e) through (g), respectively; in subsection (e) deleted "are engaged in business in compliance with subsection (e) and who" preceding ", upon", substituted "may" for "shall", inserted "reasonable", and substituted "up to one hundred fifty dollars (\$150)" for "in an amount not to exceed seventy-five dollars (\$75)"; added subsection (h); and in subsection (j) added the second sentence.

REFERENCES

ADMINISTRATIVE CODE

15 Ala. Admin. Code 473-X-4-.01, Board of Home Medical Equipment Services Providers; Inspection Standards.

LIBRARY REFERENCES

American Digest System:

Licenses  11(1).

Corpus Juris Secundum:

C.J.S. Licenses § 34.

§ 34-14C-4.1. Inspection fees. Historical Notes

The Board of Home Medical Equipment Services Providers may establish by rule, and charge and collect, reasonable inspection fees pursuant to the Alabama Administrative Procedure Act. (Act 2002-95, p. 308, § 3.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective February 27, 2002.

§ 34-14C-5. Exemptions. Historical Notes References

The licensure requirements of this chapter do not apply to the following entities or practitioners:

(1) Home health agencies certified by the State of Alabama to participate in the Medicare and Medicaid programs.

(2) Hospital based home medical equipment services, whether or not the services are provided through a separate corporation or other business entity.

(3) Health care practitioners legally eligible to order or prescribe home medical equipment, or who use home medical equipment to treat patients in locations other than the patient's residence, including, but not limited to, physicians, nurses, physical therapists, respiratory therapists, speech therapists, occupational therapists, optometrists, chiropractors, and podiatrists, except for those practitioners who provide home medical equipment services in a patient's residence.

(4) Manufacturers and wholesale distributors, when not selling directly to a patient.

(5) Retail community pharmacies, including providers of home infusion therapy services.

(6) Hospice programs, except programs which provide home medical equipment services, including delivery to a patient's residence.

(7) Skilled nursing facilities, except facilities which provide home medical equipment services, including delivery to a patient's residence.

(8) Governmental agencies, including fire districts which provide emergency medical services, and contractors to governmental agencies whose business deals only with the contracted agency.

(9) Mail order companies, if deliveries are made only via common carriers, including the United States Postal Service.

(Act 2000-739, p. 1619, § 5.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective August 1, 2000.

REFERENCES

ADMINISTRATIVE CODE

15 Ala. Admin. Code 473-X-3-.01, Board of Home Medical Equipment Services Providers; Administrative Procedure.

9C Ala. Admin. Code 420-5-17-.01 et seq., Bureau of Environmental and Health Service Standards; Division of Licensure and Certification: Hospices.

LIBRARY REFERENCES

American Digest System:

Licenses  19(3).

Corpus Juris Secundum:

C.J.S. Licenses §§ 35-36.

§ 34-14C-6. Violations; penalties; appeal; hearings. Historical Notes References

(a) An entity or person found providing home medical equipment services without a license as required by this chapter shall be subject to an administrative fine of up to one thousand dollars (\$1,000) per day that services were provided without a license. Funds collected pursuant to this chapter shall be allocated to the administration of the program.

(b) An entity or person found providing home medical equipment services without a license as required by this chapter may be administratively enjoined by the board from providing services until such time as the entity or person complies with this chapter.

(c) An entity or person subject to the penalties prescribed by subsections (a) and (b) shall be entitled to pursue an appeal through the board according to regulations promulgated by the board.

(d) Any hearings related to matters before the board shall be conducted in Montgomery County.

(Act 2000-739, p. 1619, § 6; Act 2004-441, § 1.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective August 1, 2000.

Amendment notes:

The 2004 amendment, effective August 1, 2004, added subsection (d).

REFERENCES

ADMINISTRATIVE CODE

15 Ala. Admin. Code 473-X-5-.01, Board of Home Medical Equipment Services Providers; Ethics.

15 Ala. Admin. Code 473-X-6-.01, Board of Home Medical Equipment Services Providers; Denial, Revocation, Suspension.

LIBRARY REFERENCES

American Digest System:

Licenses  41.

Corpus Juris Secundum:

C.J.S. Licenses §§ 78-81.

§ 34-14C-7. Home Medical Equipment Services Fund. Historical Notes References

There is hereby established a separate special revenue trust fund in the State Treasury to be known as the Home Medical Equipment Services Fund. All receipts collected by the board under the provisions of this chapter are to be deposited into this fund and shall be used only to carry out the provisions of this chapter. The receipts shall be disbursed only by warrant of the state Comptroller upon the State Treasury, upon itemized vouchers approved by the executive director. No funds shall be withdrawn or expended except as budgeted and allotted according to Sections 41-4-80 to 41-4-96, inclusive, and 41-19-1 to 41-19-12, inclusive, and only in amounts as stipulated in the general appropriations bill or other appropriations bills.

(Act 2000-739, p. 1619, § 7; Act 2004-441, § 1.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective August 1, 2000.

Amendment notes:

The 2004 amendment, effective August 1, 2004, substituted "executive director" for "chair of the board".

REFERENCES

ADMINISTRATIVE CODE

15 Ala. Admin. Code 473-X-3-.01, Board of Home Medical Equipment Services Providers; Administrative Procedure.

LIBRARY REFERENCES

American Digest System:

Licenses  33.

Corpus Juris Secundum:
C.J.S. Licenses § 71.

§ 34-14C-8. Sunset provision. Historical Notes

The home medical equipment services providers shall be subject to the Alabama Sunset Law, Title 41, Chapter 20, as an enumerated agency as provided in Section 41-20-3, and shall have a termination date of October 1, 2002, and every four years thereafter, unless continued pursuant to the Alabama Sunset Law.
(Act 2000-739, p. 1619, § 8.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective August 1, 2000.

Board Members

ALABAMA BOARD OF HOME MEDICAL EQUIPMENT SERVICES PROVIDERS



**Post Office Box 240636
Montgomery, AL 36124-0636
Phone: 334.215.3474 Fax: 334.215.3457
www.homemed.state.al.us**

May 20, 2005

Mr. Tony Yarbrough
Examiner of Public Accounts
P.O. Box 302251
Montgomery, AL 36124-0636

Dear Mr. Yarbrough:

This letter lists the name, mailing address, expiration of term, status, minority representation, etc. of all current board members per your request.

Mike Benefield, Chairman
Home Medical Care Company
P.O. Box 1248
Phenix City, AL 36868-1248
Phone: 334.291.0900
FAX: 334.291.0066
E-mail: hmcmb4@aol.com
Term: 11-01-04 to 10-31-08
Representation: HME Services Industry
Male, Caucasian

Lewis Fuller, Member
Fuller Medical
P.O. Box 284
Gadsden, AL 35902-0284
Phone: 256.547.6200
FAX: 256.547.6258
E-mail: lewis@fullermedical.com
Term: 04-07-04 to 10-31-06
Representation: HME Services Industry
Male, Caucasian

John G. Beard, Vice Chairman
Alacare Home Health & Hospice, Inc.
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Phone: 205.981.8581
FAX: 205.981.8432
E-mail: johnb@alacare.com
Term: 11-01-00 to 10-31-05
Representation: Home Health Agency
Male, Caucasian

Lilly Henderson Harold, Member
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Montgomery, AL 36109-1205
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FAX: 334.215.3744
E-mail: rlharold@charter.net
Term: 11-01-00 to 10-31-05
Representation: Consumer
Female, Caucasian

Dr. Ronnie Lee Lewis, Member
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Fyffe, AL 35971
Phone: 256.845.7555
FAX: 256.845.4499
E-mail: rllewis@farmerstel.com
Term: 11-01-04 to 10-31-05
Representation: Physician
Male, Caucasian

Leigh Ann Matthews, Member
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Fort Payne, AL 35968
Phone: 256.845.0883
FAX: 25.845.3018
E-mail: leighann@complete1.com
Term: 11-01-00 to 10-31-05
Representation: HME Services Industry
Female, Caucasian

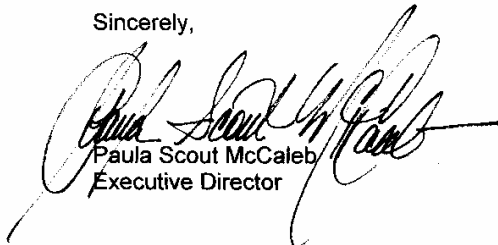
Roger Schofield, Member
Schofield Homecare Services, Inc.
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Florence, AL 35630
Phone: 256.767.5509
FAX: 256.767.5510
E-mail: rschofield@bellsouth.net
Term: 04-07-04 to 10-31-06
Representation: HME Services Industry.
Male, Caucasian

Diane Starnes, Member
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E-mail: griffin_pharmacy@msn.com
Term: 04-07-04 to 13-31-06
Representation: HME Services Industry
Female, Caucasian

Diane Garrett-Williamson, Member
Clay County Hospital & Nursing Home
P.O. Box 1270
Ashland, AL 36251
Phone: 256.354.2509
FAX: 256.354.2825
E-mail: socializer40@hotmail.com
Term: 11-01-04 to 10-31-08
Representation: Acute-Care Hospital Community
Female, Caucasian

Please don't hesitate to contact me if you have any questions or comments regarding this matter for Sunset Review Audit. Thank you.

Sincerely,



Paula Scout McCaleb
Executive Director